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December 15, 2000

David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505


**Re: Petition of MCI WorldCom to Enforce Interconnection Agreement  
Docket No. 99-00662**

Dear David.

Please accept for filing the original and thirteen copies of MCI WorldCom's post-hearing brief in the above-captioned proceeding. A copy has been forwarded to Guy Hicks, counsel for BellSouth Telecommunications, Inc.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
Henry Walker

HW/nl  
Enclosure  
cc: Parties

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

12/15/00 11:33:30

In Re:	)	
	)	
Complaint of MCI WorldCom, Inc	)	DOCKET NO. 99-00662
Against BellSouth Telecommunications, Inc.	)	
To Enforce Interconnection Agreement	)	

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**POST-HEARING BRIEF OF MCI WORLDCOM INC.**

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**Counsel for MCI WorldCom, Inc.**

## INTRODUCTION

MCI WorldCom, Inc. ("MCI WorldCom") submits the following post-hearing Brief in this matter. This proceeding arises out of a dispute between MCImetro<sup>1</sup> and BellSouth Telecommunications, Inc. ("BellSouth") over the terms of an Interconnection Agreement (the "Agreement") that was signed on April 4, 1997. The dispute addresses MCI WorldCom's right to compensation for the termination of local telephone calls made to Internet Service Providers ("ISPs").

On September 22, 2000, the Tennessee Regulatory Authority ("TRA") issued a final Order in *In Re: Complaint of AVR of Tennessee, LP d/b/a Hyperion of Tennessee, LP Against BellSouth, et seq.* TRA docket no. 98-00530. That case is virtually identical to this one. See Martinez Rebuttal, 2-3. Therefore, the TRA's findings of fact and conclusions of law in *Hyperion* predetermine, to a substantial degree, the outcome of the present proceeding.

The Hyperion-BellSouth interconnection agreement was signed April 1, 1997. In that agreement, the parties agreed to pay reciprocal compensation for the delivery of "local traffic" which "is defined as:

any telephone call that originates in one exchange and terminates in either the same exchange, or an associated Extended Area Service ("EAS") exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3. of BellSouth's General Subscriber Service Tariff."

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<sup>1</sup>See Agreement Between MCImetro Access Transmission Services, Inc. and BellSouth Telecommunications, Inc., effective April 4, 1997, approved by the Tennessee Regulatory Authority (the "Authority") on May 30, 1997, Docket No. 97-00445. MCImetro Access Transmission Services, Inc., known today as MCImetro, is an affiliate of MCI WorldCom. For simplicity, this Post-Hearing Brief will hereafter refer to MCImetro as MCI WorldCom.

As the Authority found, (Initial Order, 11) the agreement “contains no express references to [ISP traffic], and both parties confirm that this matter was not isolated for discussions during negotiations.” Based, however, on “the regulatory dynamics that existed at the time of the Agreement’s execution” ( at 23) including the rules and orders of the FCC and the definition of a “completed” “local” call from BellSouth’s own tariffs, the Authority concluded that “the intentions of the parties at the time the Agreement was signed was that ISP-bound traffic be treated as local traffic.” *Id*, 23.

The agreement at issue in the present case was signed on April 4, 1997, just three days after the Hyperion agreement. It, too, provides for the payment of reciprocal compensation for “local traffic” which “is defined

as any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area (EAS) exchange. The terms Exchange and EAS exchanges are defined and specified in Section A3 of BellSouth’s General Subscriber Service Tariff.”

Attachment IV, Subsection 2.2.1 *See* Martinez Direct, 2-3. As in the *Hyperion* case, the agreement contains no specific reference to ISP traffic and there was no discussion of ISP traffic during negotiations. Martinez Direct, 5.

In sum, there does not appear to be any relevant distinction -- in fact, in law, or in the surrounding circumstances — between the Hyperion contract provision on reciprocal compensation and the corresponding provision in the MCI WorldCom agreement.

## THE EVIDENCE

Ronald Martinez was the lead negotiator of the Agreement for MCI WorldCom. Martinez Direct at 2.<sup>2</sup> At the time the Agreement was entered into, MCI WorldCom understood that, based on the long-standing treatment of calls to ISPs as local, such calls were within the definition of “local traffic” in the Agreement. Martinez Rebuttal at 2. The issue of reciprocal compensation for ISP traffic was never discussed during the negotiations. Martinez Direct, at 4-5.

ISP calls are viewed as terminating at the ISP. Martinez Direct, 3-4. A “telephone call” placed over the public switched network is “terminated” when it is delivered to the telephone exchange service premise bearing the called telephone number, regardless of the identity or status of the party called. *Id.* At the time the Agreement was negotiated, the understanding within the industry was that a call is completed or terminated when BellSouth delivers the local seven or ten digit dialed call to the MCI WorldCom switch, the MCI WorldCom switch seizes the called party’s line, receives answer supervision, and opens the path for the BellSouth customer to communicate with the MCI WorldCom customer. Martinez Rebuttal at 2. This remains the industry understanding today (*id.*) and, at the time of the negotiations, was also reflected in BellSouth’s General Subscriber Service Tariffs (GSST). *Id.*

Attachment IV, Subsection 2.2.1. of the Agreement provides in relevant part: “The Parties shall bill each other reciprocal compensation at the rates set forth for Local Interconnection in this Agreement and the Order of the TRA.” Martinez Direct at 3. “Local Traffic” is defined as

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<sup>2</sup>Ronald Martinez is an executive staff member in the law and public policy group of MCI Telecommunications Corporation.

described above. Rates for the exchange of local traffic are set forth in Table 1 of Attachment 1 to the Agreement. (*Id.*).

## ARGUMENT

### **I. THE AGREEMENT UNAMBIGUOUSLY PROVIDES THAT CALLS TO ISPS SHOULD BE TREATED AS LOCAL TRAFFIC**

In the Hyperion case, the TRA concluded:

[I]t is reasonable to find that both Hyperion and BellSouth were very much aware of the FCC's long-standing policy of treating ISP-bound traffic as local... Failure by either party to specifically address the regulatory treatment of ISPs within the Agreement does not in any manner inspire a conclusion that the parties intended any treatment for ISPs that represented a departure from that local treatment historically received. Initial Order, at 22.

The present proceeding raises the same issue. The Authority is being asked to interpret the meaning of "Local Traffic" in the MCI WorldCom Agreement. Here again, BellSouth disputes the meaning of such terms as "Local Traffic" and "terminating" and offers testimony concerning the parties' intentions and motivations during the contract negotiations as to whether ISP traffic was intended to fit within those definitions.<sup>3</sup> BellSouth fails to address the simple fact that the definition of "Local Traffic" in the Agreement at issue here is, for all practical purposes, identical to the definition of the term in the Hyperion Agreement.

As the TRA held in *Hyperion*, when a call is placed by a BellSouth end-user to an ISP served by Hyperion (or MCI WorldCom) answer supervision is returned, indicating a completed connection between the ISP and the end user. *See* Martinez Rebuttal at 2. Traffic to ISPs is treated no differently than traffic to any other local exchange end user. *Id.*

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<sup>3</sup> *See e.g.*, Hendrix Rebuttal at 5-17; Scollard at 2.

In short, the issue before the Authority now is the same issue that was before the Authority in *Hyperion*. MCI WorldCom contends that the Authority reached the right result in that case and there is no basis to deviate from it here. Indeed, BellSouth presented no evidence whatever that should cause the Authority to reconsider the decisions reached in *Hyperion*.

## **II. RECIPROCAL COMPENSATION RATE**

There is one issue in this case which was not raised in the *Hyperion* proceeding: if BellSouth is required to compensate MCI WorldCom for terminating local calls to ISPs, what is the appropriate rate to be applied? MCI WorldCom witness Daniel Aaronson testified (at 2-3), that the Agreement states that the parties “shall bill each other reciprocal compensation at the rates set forth for Local Interconnection in this Agreement and the Order of the TRA.” As shown in the attachments to Mr. Aaronson’s testimony, the TRA-established rates are \$.005 per minute for “interconnection through the BellSouth tandem” and \$ 0.004 per minute for “direct end office interconnection.” MCI contends that the applicable rates in this case is \$.005 per minute. Martinez Rebuttal, 3-4. Although BellSouth did not propose a specific rate, witness Hendrix testified that, although MCI WorldCom should pay the higher, tandem rate to BellSouth, BellSouth should pay the smaller, end office rate to MCI WorldCom. Hendrix Rebuttal, 18-23.

Mr. Hendrix’s testimony based on his interpretation of an FCC rule and does not even mention the provisions of the Agreement itself which states explicitly that “BellSouth shall also pay to MCI a charge symmetrical to its own charges for tandem switching, tandem-to-end office transport, and end office termination.” Martinez Rebuttal, at 3-4.

As Mr. Martinez testified (Rebuttal, 4), BellSouth has been billing MCImetro “a reciprocal compensation rate of \$.005/mou.” Therefore, “pursuant to the agreement, MCImetro has been

billing BellSouth a symmetrical reciprocal compensation rate of \$.005/mou.” *Id.* (Copies of the applicable portions of the Agreement are included in the direct testimony of Aaronson and the rebuttal testimony of Martinez.)

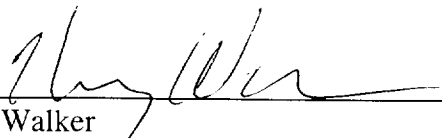
In sum, regardless of how BellSouth interprets the FCC’s rules, there is no doubt that the Agreement at issue in this case requires that BellSouth and MCI WorldCom each pay each other at the same tandem interconnection rate of \$.005/mou. BellSouth’s evidence does not even address, much less dispute, this requirement in the Agreement.

### CONCLUSION

For the same reasons articulated in the *Hyperion* decision, MCI WorldCom is entitled to reciprocal compensation for terminating local calls to ISPs. The language in the two agreements, signed only three days apart, is identical. In neither case did the parties address the ISP issue during negotiations. The conclusion of the TRA about the meaning of the language in the two agreements must also be the same.

Based on the express language of the Agreement, BellSouth owes MCI WorldCom reciprocal compensation at the rate of \$ .005/mou for all local traffic since the effective date of the Agreement. The TRA should issue an Order directing BellSouth to pay what it owes by a date certain.

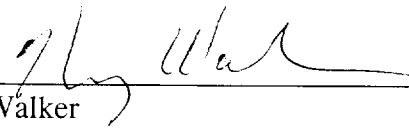
Respectfully submitted,

  
Henry Walker



**Certificate of Service**

I certify that copies of the foregoing have been mailed to Guy Hicks, counsel for BellSouth Telecommunications, Inc., 333 Commerce Street, Nashville, Tennessee 37201 this 15<sup>th</sup> day of December, 2000.

  
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Henry Walker